(4)

C.S. 382/1

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 263/2004

APPEAL U/S. 100 OF CIVIL PROCEDURE CODE

APPELLANT : {PLAINTIFF} (Resp. No. 1 in LAC) — Smt. Kanti Bai, W/o Bharat Lal age 23 years, R/o Village Chuhka, Tah. Bemetara Distt. Durg. (CG)

VERSUS

RESPONDENTS : {DEFENDANTS}

1. A. Taran Singh, S/o Budhu Singh Lodhi, aged about 35 years. R/o Village Hadgaon, Tah. Berla, Distt. Durg (CG.)

B Someshwar Singh, S/o Budhu Singh Lodhi, aged about 30 years, Occupation farmer, R/o Village Hadgaon, Tah. Berla, Distt. Durg (CG.)

C Uttam Bai W/o Krishna Lodhi, aged 40 years, R/o Ghiwari , Tah. Saaja, Distt. Durg. (CG)

D Sati Bai, W/o Baldeo Lodhi, aged about 28 years, R/o Mohtara, Tah. Bemetara, Distt. Durg.

E Indrani Bai W/o Yogesh Lodhi, aged about 25 years, R/o Souri, Tah. Saaja, Distt. Durg (CG)

2. Smt. Geeta Bai aged about 38 years, W/o Budhu, R/o Village Hadgaon, Tah. Berla, Distt. Durg (CG)

3. Gulab, aged about 30 years, S/o All Cast Lodhi, Occupation Farmer, R/o. Village Hadgaon, Tah. Bemetara.

4. Sahodra Bai, W/o Beni Ram, R/o Village Hadgaon, Tah., Berla, Distt. Durg. (CG)

5. Bedan Bai W/o Sant Ram, (Sita Ram) R/o Village Hadgaon, Tah. Berla, Distt. Durg. (CG)

P.R. No. 11381/04 Presented by Shri C.L. Mishra dated 30-4-04

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6. Nathu S/o Manaram, aged about 50 years, R/o Village Hadgaon, Tah. Berla, Distt. Durg. (CG)

7. A. Girja Bai, Widow/of Avadh Lodhi, aged about 30 years, R/o Village Hadgaon, Tah. Berla, Distt. Durg. (CG)

B. Ku. Pookku Bai Daughter of Avadh age 5 years, R/o Village Hadgaon, Tah. Berla, Distt. Durg (CG)

C. Ku. Pinki Daughter of Avadh age 3 years.
Both B-C Minor, through; Mother Smt. Girja Bai, Widow/of Avadh Lodhi, All R/o Village Hadgaon, Tah. Berla, Distt. Durg.

8 Kumla, Daughter of Mana Lodhi, aged about 30 years, R/o Village Hadgaon, Tah. Berla, Distt. Durg. (Chhattisgarh)

9. Sanat S/o Mana Ram Lodhi, aged about 29 years, Both 8to 9s R/o Village Hadgaon, Tah. Berla, Distt. Durg (CG)

10. Shanti Bai, W/o Padum Lodhi, aged about 55 years, R/o Masulgondi, Tah. Saaja, Distt. Durg (CG).

11. Kamla Bai, Daughter Manaram, aged about 27 years, R/o Matara, Tah. Saaja, Distt. Durg (CG).

12. Sushila Bai, Daughter Manaram, aged about 25 years, R/o Hadgaon, Tah. Berla, Distt. Durg (CG).

13. Rani Bai Daughter of Manaram Lodhi, aged about 23 years, R/o Daniya, Tah. Saaja Distt. Durg (CG).

14. Usha Bai Daughter of Manaram, aged about 21 years, R/o Hagdaon, Tah. Berla, Distt. Durg (CG).

15. State of Madhya Pradesh, through Collector Durg (CG).

CLAIM IN ORIGINAL SUIT FOR PARTITION AND

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 263/2004

Appellant/plaintiff : Smt. Kanti Bai

Versus

Respondents/defendants : Taran Singh and others

J U D G M E N T

BE POSTED FOR 19-6-2006

Sd/-
Dhirendra Mishra
Judge

(20)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 263/2004

Appellant/plaintiff : Smt. Kanti Bai

Versus

Respondents/defendants : Taran Singh and others

Shri V.D. Bajpai learned Sr. Counsel with Shri Ashok Das Vaishnav for the appellant.

J U D G M E N T

(Delivered on 19-6-2006)

Dhirendra Mishra,J

The appellant has preferred this appeal against the judgment and decree dated 30/1/2004 passed by learned Second Additional District Judge (FTC) Bemetra in Civil Appeal No. 25-A/2003 whereby the appeal preferred by respondents/defendants against the judgment and decree dated 22/1/1982 passed by Civil Judge Class II Bemetra in Civil Suit No. 174-A/1997 has been allowed and the suit of the appellant/plaintiff for partition has been decreed.

2. Case of the plaintiff before the Trial Court was that plaintiff was the daughter of Konda who was a member of Joint Hindu Family along with his father Narayan. Lands described Schedule "A" and the house described in Schedule "B" belonged to the Joint Hindu Family. Plaintiff's mother Mainabai was the widow of Konda whereas one Hulasabai married Narayana after the death of Konda. Manaram and Buddhu are also the sons of Narayana. After the death of Konda who died some 23 years before the institution of the suit, his widow Mainabai inherited 1/4th share in the suit property. Plaintiff was born 4 months after the death of her father. Mainabai remarried in the year 1954 with one Bhukhau Lodhi and thus Mainabai died a civil death for the purpose of Joint Hindu Family. Initially the plaintiff stayed with her mother even after her second marriage for 3 years. However, subsequently her grandfather Narayana, defendant No. 1 brought the plaintiff back with him and thus after the civil death of her mother the plaintiff was entitled for 1/4th share in the suit property as per the provisions of Section 164(2)(b) of the M.P. Land Revenue Code 1959, as prevalent in the year 1960. It was further pleaded that after marriage also the plaintiff continued to live with her grandfather Narayana. Defendants 1 to 6 in their written statements admitted that after the death of father of the plaintiff Konda, Narayana married deceased defendant No. 2. However, rest of the

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pleadings were denied and it was submitted that plaintiff is not the member of Joint Hindu Family nor her father Konda lived jointly with Narayana and as such she was not entitled for 1/4th share in the suit property. Plaintiff was born 8 months after the death of Konda. Since Mainabai did not remarry, she was a necessary party to the suit. Plaintiff has no right or interest over the suit property. The lands described in the plaint are self acquired properties of the defendants. Defendants 7 to 9 also denied the plaint allegations and submitted that plaintiff Kantibai was not the daughter of Konda and Konda was the member of Joint Hindu family. However, the property described in Schedule- A & B is not the property of the Joint Hindu Family. There was no cohabitation with Mainabai and Konda after their marriage due to illness of Konda and therefore, the plaintiff is not the daughter of Konda, and Mainabai married Bhukhau Lodhi of village Hadgoan.

3. On the basis of the pleadings of the respective parties learned Trial Court framed issues and decreed the suit by recording a finding that the plaintiff is entitled for 1/4th share in the suit property though she was not entitled for damages as she was the daughter of Konda and the property described in Schedule A & B is the property of Joint Hindu Family and accordingly the suit was decreed.

4. During the pendency of appeal defendants 7 to 9 amended their written statements and pleaded that Mainabai married Bhukhu Lodhi in the year 1954 and gave birth two children namely Shantibai and Ninubai. Shantibai was born on 15.3.56. The plaintiff also preferred consequential amendment in the plaint. However, the specific pleading of defendants No. 7 to 9 has not been denied. In the light of the amendment in the plaint and the written statement the appellate Court afforded an opportunity of leading evidence to the respective parties. Thereafter, plaintiff examined herself and her witness Baldau and Bhausingh whereas the defendant examined Gulab in support of his case. Learned Lower Appellate Court allowed the appeal, set aside the judgment and decree of the trial Court and dismissed the suit of the plaintiff.

5. Learned counsel for the appellant submits that finding of the Lower Appellate Court reversing the well reasoned judgment of the trial Court is based on mis-appreciation of the Hindu Succession Act as also of M.P. Land Revenue Code and therefore substantial questions of law as mentioned in memo of appeal arise for adjudication of this appeal.

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6. I have heard learned Counsel for the appellant and gone through the records of the Courts below as also memo of appeal.

7. The Lower Appellate Court allowed the appeal of the respondents/defendants by recording a finding that Mainabai contracted *Churi* marriage with Bhukhu in the year 1954 after the death of her former husband Konda who died in the year of 1953. She gave birth to two children namely Shantibai and Ninuabai through Bhukhu. Shantibai was born on 15.3.56 and therefore, it can be presumed that Bhukhu and Maina got married before June 1955 whereas M.P. Land Revenue Code came into force on 2nd October 1959, therefore provisions of Section 164 (2)(b) of the M.P. Land Revenue Code of 1959 were not applicable in the instant case. Before coming into force of Hindu Succession Act, the property right of the woman was governed by Hindu Woman's Right to property Act 1937 and as per the Act of 1956 widow of a Joint Hindu Family was the limited owner of coparcenary property and she was entitled for maintenance and right of partition was not available to the widows and absolute ownership over the property was conferred on the widows only after coning into force of Hindu Succession Act. In the instant case Mainabai did not initiate any proceedings for partition of coparcenary property before her marriage and she contracted marriage in the year 1955 and therefore, after remarriage the property reversed back to other coparceners. The above finding is based on subsequent pleadings of the respective parties and evidence adduced by the parties during the pendency of appeal. The appellant has not raised subsequent developments either in the memo of appeal or during the course of argument.

8. In the light of the new evidence brought on record during the pendency of appeal and in the factual premises of the case to the effect Mainabai, mother of the plaintiff remarried before June 1955, i.e. before coming into force of Hindu Succession Act and M.P. Land Revenue Code, the very basis of the suit is lost and finding of the Lower Appellate Court that Mainabai got limited right over the suit property reversed back to other coparcenaries after remarriage, cannot be faulted.

9. In the light of the aforesaid discussion, no substantial question of law as proposed in the memo of appeal is involved for adjudication. Thus the appeal being without substance is liable to be dismissed. It is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge